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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/486,677 06/26/00 BEHLER

A H-2938-PCT/U

EXAMINER

HM12/1011

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ART UNIT

PAPER NUMBER

1621

DATE MAILED:

10/11/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/486,677

Applicant(s)

Behler et al.

Examiner

Rosalyn Keys

Group Art Unit

1621



☐ Responsive to communication(s) filed on \_\_\_\_\_

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 10-30 is/are pending in the application

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 10-30 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☒ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 3

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

*Status of Claims*

1. Claims 10-30 are pending.

Claims 10-30 are rejected.

*Priority*

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

*Information Disclosure Statement*

3. The information disclosure statement filed June 26, 12000 has been considered.

*Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 10-24 and 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by

GB 1,172,931.

GB 1,172,931 teach the instant claims at page 2, lines 15-35, 75-80 and 105-123; page 3, lines 2-38; and Examples IV and V.

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6. Claims 10-25 and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Compton et al. (US 4,093,418).

Compton et al. teach the instant claims at column 1, line 58 to column 2, line 3; column 2, lines 36-42 and lines 55-60; column 3, line 67 to column 4, line 17; and Example 1.

7. Claims 10-13, 15-18, 20-24 and 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Stoeckigt et al. (US 4,280,919).

Stoeckigt et al. teach the instant claims at column 2, line 20 to column 3, line 39, Example and claim 1.

8. Claims 10-13, 15-18, 20-25 and 27-29 rejected under 35 U.S.C. 102(b) as being anticipated by JP 7-303825.

JP 7-303825 teach the instant claims at claim 1, pages 2-4 and Table 1.

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*Claim Rejections - 35 USC § 103*

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 25, 26 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1,172,931.

GB 1,172,931 teach the invention as described above but fail to teach the ranges disclosed in the instant claims. However, it is well-established that merely selecting proportions and ranges is not patentable absent a showing of criticality. In re Becket, 33 U.S.P.Q. 33 (C.C.P.A. 1937). In re Russell, 439 F.2d 1228, 169 U.S.P.Q. 426 (C.C.P.A. 1971). The use of surfactants with agrochemicals and pesticides is well known in the art.

12. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Compton et al. (US 4,093,418).

Compton et al. teach the invention as described above but fail to teach the ranges disclosed in the instant claims. However, it is well-established that merely selecting proportions and ranges is not patentable absent a showing of criticality. In re Becket, 33 U.S.P.Q. 33 (C.C.P.A.

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1937). In re Russell, 439 F.2d 1228, 169 U.S.P.Q. 426 (C.C.P.A. 1971). The use of surfactants with agrochemicals and pesticides is well known in the art.

13. Claims 14, 19, 25, 26 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stoeckigt et al. (US 4,280,919).

Stoeckigt et al. (US 4,280,919) teach the invention as described above but fail to teach the ranges disclosed in the instant claims. However, it is well-established that merely selecting proportions and ranges is not patentable absent a showing of criticality. In re Becket, 33 U.S.P.Q. 33 (C.C.P.A. 1937). In re Russell, 439 F.2d 1228, 169 U.S.P.Q. 426 (C.C.P.A. 1971). The use of surfactants with agrochemicals and pesticides is well known in the art.

14. Claims 14, 19, 26 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 7-303825.

JP 7-303825 teach the invention as described above but fail to teach the ranges disclosed in the instant claims. However, it is well-established that merely selecting proportions and ranges is not patentable absent a showing of criticality. In re Becket, 33 U.S.P.Q. 33 (C.C.P.A. 1937). In re Russell, 439 F.2d 1228, 169 U.S.P.Q. 426 (C.C.P.A. 1971). The use of surfactants with agrochemicals and pesticides is well known in the art.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosalynd Keys whose telephone number is (703) 308-4633. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703) 308-1235. The Examiner's supervisor, Johann Richter, may be reached at (703) 308-4532. Communications may now be transmitted via FAX directly to group 1600. The official group 1600 FAX machine number is (703) 308-4556.



ROSALYND KEYS  
PATENT EXAMINER  
GROUP 1600  
October 10, 2000